

November 10, 2015

Via Certified Mail

Tom Clarke, President
Virginia Conservation Legacy Fund
5244 Valleypointe Parkway
Roanoke, VA 24019

Re: 60-Day Notice of Intent to File Citizen Suit

Dear Mr. Clarke:

On behalf of Stollings Trucking Company, Inc. (“Stollings”), we hereby notify you of ongoing violations of the federal Clean Water Act, 33 U.S.C. § 1251, *et seq.*, the federal Surface Mining Control and Reclamation Act (“SMCRA”), 30 U.S.C. § 1201, *et seq.*, and the West Virginia Surface Coal Mining and Reclamation Act, (“WVSCMRA”), *W. Va. Code* § 22-3-1, *et seq.* as a result of the operation of the North Rum Surface Mine near Logan, West Virginia. The North Rum Surface Mine is governed by West Virginia Department of Environmental Protection (“WVDEP”) Mining Permit No. S-5006-05 and WV/NPDES Permit No. WV1022792 (collectively the “North Rum Permits”), both of which were previously held by Apogee Coal Company (“Apogee”).

As of October 27, 2015, the Virginia Conservation Legacy Fund, Inc. (“VCLF”) became the successor-in-interest to the North Rum Permits as a result of an asset-purchase agreement between VCLF, Apogee, and Patriot Coal Corporation approved by the Bankruptcy Court for the Eastern District of Virginia in Case No. 15-32450.

Stollings intends to commence a citizen suit (either directly or in the form of a third-party complaint) against VCLF in federal court pursuant to the Clean Water Act, SMCRA, and WVSCMRA seeking injunctive relief and civil penalties if VCLF does not bring the North Rum Surface Mine into compliance with applicable laws and regulations within sixty (60) days of the postmark of this letter.

I. Factual Background

The North Rum Surface Mine is adjacent to, and up-gradient of, areas governed by certain mining-related permits held by Stollings – namely WV/NPDES Permit No. 1013203 and WVDEP Mining Permit No. S-5024-95 (collectively the “Stollings Permits”). As part of the operation of the North Rum Surface Mine, overburden material was deposited into Apogee’s Valley Fill No. 1, which drains into a sediment pond known as Pond No. 1. For ease of reference, Pond No. 1 at the North Rum Surface Mine will be referred to as the “North Rum Pond No. 1.” The authorized discharge point from North Rum Pond No. 1 is known as Outlet

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022, which is governed by WV/NPDES Permit No. WV1022792. North Rum Pond No. 1 was constructed on top of previously disturbed ground.

North Rum Pond No. 1 is improperly designed, constructed, and/or maintained in that water flowing into North Rum Pond No. 1 passes through the bed or sides of the pond instead of pooling for treatment and being discharged through Outlet 022. As a result, untreated water flows through the subsurface below North Rum Pond No. 1 until it emerges and discharges into a different sediment pond governed by the Stollings Permits also known as Pond No. 1, which discharges through Outlet 001 as authorized by WV/NPDES Permit No. 1013203. For ease of reference, Pond No. 1 governed by the Stollings Permits will be referred to as “Stollings Pond No. 1.” This pond is not located with the permit area of the North Rum Surface Mine.

The water flowing or otherwise emanating from North Rum Pond No. 1 contains concentrations of selenium that cause the water discharging from Stollings Pond No. 1 through Outlet 001 to exceed selenium effluent limits in the Stollings Permits and associated water quality standards. Upon information and belief, Stollings has not engaged in any mining or reclamation activity that would cause selenium to be discharged from Stollings Pond No. 1 in concentrations exceeding effluent limits or water quality standards. The only activity in the vicinity of Stollings Pond No. 1 that could cause elevated selenium concentrations in the discharge is the operation of the North Rum Surface Mine.

The West Virginia Department of Environmental Protection, Division of Mining and Reclamation (“WVDEP”) has acknowledged the problem with North Rum Pond No. 1 described above, but has not taken enforcement action against the North Rum Surface Mine to correct the problem.

Sediment control structures along the western boundary of the North Rum Surface Mine permitted area are improperly designed, constructed, and/or maintained. Water passes through the beds or sides of these structures instead of pooling for treatment and then discharging through permitted outlets. These sediment control structures include SD-2, SD-3, SD-4, SD-5, SD-33, SD-34, Div. Ditch 34, and SD-35 as shown on Proposal/Drainage Map for the North Rum Surface Mine dated August 29, 2013. As a result, untreated water containing pollutants, including selenium, flows into the ground and ultimately discharges through unpermitted point sources.

II. Clean Water Act Violations

The Clean Water Act prohibits the discharge of pollutants except in compliance with a permit. 33 U.S.C. § 1311. The North Rum Surface Mine is discharging pollutants – namely selenium – through one or more point sources (Valley Fill No. 1, North Rum Pond No. 1, and other sediment control structures) that flow into Stollings Pond No. 1 and possibly onto other areas covered by the Stollings Permits and ultimately into a water of the United States. The North Rum Permits do not authorize the discharge or release of pollutants in this matter. The North Rum Surface Mine is also discharging pollutants through unpermitted point sources as result of the improper design, operation, and maintenance of sediment control structures that allows untreated water to bypass the permitted outlets.

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North Rum Surface Mine WV/NPDES Permit No. WV1022792 incorporates by reference a regulation that prohibits discharges that cause violations of water quality standards. W. Va. C.S.R. § 47-30-5.1.f. Discharges from the North Rum Surface Mine have caused concentrations of selenium in the receiving stream below Stollings Pond No. 1 to exceed water quality standards.

III. Surface Mining Violations

SMCRA requires that all discharges from permitted mining operations “shall be made in compliance with all applicable State and Federal water quality laws and regulations and with the effluent limitations for coal mining promulgated by the U.S. Environmental Protection Agency set forth in 40 CFR part 434.” 30 C.F.R. § 816.42. WVSCMRA establishes a similar standard: “Discharge from areas disturbed by surface mining shall not violate effluent limitations or cause a violation of applicable water quality standards.” W. Va. C.S.R. § 38-2-14.5.b. Both SMCRA and WVSCMRA prohibit mining activities that cause material damage to the hydrologic balance outside the permit area. 30 C.F.R. § 816.41(a); W. Va. C.S.R. § 38-2-14.5.

Discharges of water from the North Rum Surface Mine have caused exceedances of effluent limits and/or water quality standards in violation of the performance standards recited above. Such discharges have also caused material damage to the hydrologic balance outside the permit area.

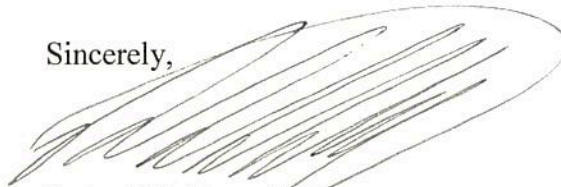
SMCRA and WVSCMRA require sufficient water-treatment facilities or water quality controls to be in place to ensure that discharges from disturbed areas do not violate effluent limits or water quality standards. 30 C.F.R. § 816.41(d)(1); W. Va. C.S.R. § 38-2-14.5.c. The North Rum Surface Mine has failed to construct, operate, and maintain water-treatment facilities or water quality controls sufficient to ensure that discharges from disturbed areas do not violate effluent limits or water quality standards.

IV. Conclusion

For all the reasons stated above, the North Rum Surface Mine is in ongoing violation of the Clean Water Act, SMCRA, and WVSCMRA. Stollings intends to commence a citizen suit against VCLF in federal court if the violations set forth in the letter are not abated or subject to diligent prosecution by the appropriate agency within 60 days of the postmark of this letter.

If you believe the contents of this letter are inaccurate in any way, or you wish to discuss the relevant circumstances, please feel free to contact me.

Sincerely,



Robert M. Stonestreet
Counsel for Stollings Trucking Company, Inc.

RMS/seb

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November 3, 2015

cc: Amy Vernon-Jones (via U.S. mail)
Derek O. Teaney (via U.S. mail)

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